

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERTA L. KAAUMOANA and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Hilo, HI

*Docket No. 02-891; Submitted on the Record;
Issued October 9, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to wage-loss compensation for April 10, 1999 to January 7, 2000 and June 3 to July 28, 2000.

On October 28, 1997 appellant, a 30-year-old part-time distribution/window clerk, filed a claim alleging that she sustained an injury in the performance of duty on October 27, 1997 when she had difficulty pushing the employee gate to lock up. The Office of Workers' Compensation Programs accepted the claim for left shoulder strain and brachial plexopathy.

On July 6, 1999 the Office issued a notice of proposed termination of compensation benefits on the basis that she was capable of working 8 hours per day and 40 hours per week modified duty. On August 9, 1999 the Office finalized the termination of compensation benefits effective August 8, 1999.

On May 12, 2000 appellant filed a Form CA-8 (claim for continuing compensation), claiming there was no work available according to Janice Maldonado, appellant's supervisor. Appellant subsequently filed Forms CA-8 on June 14 and 28, 2000, July 1, 15 and 22, 2000 for lost wages due to the lack of work.

In a letter dated July 21, 2000, appellant stated that she was filing for compensation for lost wages because the employing establishment had not been providing her with 40 hours of duty.

By decision dated August 11, 2000, the Office denied the claim.¹

In a September 7, 2000 letter, appellant requested an oral hearing which was held on August 8, 2001.

¹ The Board notes appellant filed a claim for a schedule award. As there is no final decision of record regarding a schedule award claim, this issue is not before the Board on the present appeal.

In a decision dated December 3, 2001, the hearing representative affirmed the Office's August 11, 2000 decision, which found appellant was not entitled to compensation.

The Board finds appellant is not entitled to wage-loss compensation for April 10, 1999 to January 7, 2000 and June 3 to July 28, 2000.

The Board has held that when an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

In the present case, appellant did not submit any medical evidence to the record to substantiate that she could not perform the modified-duty position. Rather, appellant alleged that the reduction in her hours to less than 40 hours per week in 1999 and 2000 was due to the employing establishment's reduction of hours for part-time flexible employees. The evidence of record does not establish that the employing establishment had taken any formal action to cause any change in the nature and extent of appellant's light-duty job requirements.

Section 8102(a) of the Federal Employees' Compensation Act³ sets forth the basis upon which an employee is eligible for compensation benefits. That section provides:

"The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty...."

In general the term "disability" under the Act means "incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury."⁴ This meaning, for brevity, is expressed as "disability for work."⁵

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used under the Act and is not entitled to compensation for loss of wage-earning capacity. When, however, the medical evidence establishes that the residuals of an employment injury are such that, from a medical

² *Terry R. Hedman*, 38 ECAB 222 (1986); *see also Gus N. Rodes*, 46 ECAB 518 (1995).

³ 5 U.S.C. § 8102(a).

⁴ *William H. Kong*, 53 ECAB ____ (Docket No. 01-1740, issued February 25, 2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984); 20 C.F.R. § 10.5(f).

⁵ *John W. Normand*, *supra* note 3; *Clarence D. Glenn*, 29 ECAB 779 (1978).

standpoint, they prevent the employee from continuing in his or her employment, the employee is entitled to compensation for any loss of wage-earning capacity resulting from the employment injury.⁶

In the instant case, appellant would have been entitled to compensation for total disability if she was unable to perform the limited-duty position assigned by the employing establishment upon her return to work or if the employing establishment was unable to assign a limited duty position in accordance with her doctor's specification. The record reveals that appellant was employed as a part-time distribution/window clerk as of the date of her injury. Appellant is not claiming that the reduction in her hours was due to her disability to perform her employment duties. The reason for the reduction in appellant's hours to less than 40 hours per week in 1999 and 2000 was due to the employing establishment's reduction of hours for part-time flexible employees. As the reduction of appellant's hours was unrelated to her injury, the Office properly determined that appellant failed to meet the definition of disability and was not entitled to wage-loss compensation for the intermittent periods during April 10, 1999 to January 7, 2000 and June 3 to July 28, 2000.⁷

The December 3, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 9, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ *Merle J. Marceau*, 53 ECAB ____ (Docket No. 00-1995, issued November 1, 2001).

⁷ *Major W. Jefferson, III*, 47 ECAB 295 (1996); *John W. Normand*, *supra* note 3